Instructions for Form 4917
Flow-Through Withholding (FTW) Quarterly Return

Purpose

Michigan Compiled Laws 206.703 requires flow-through entities to withhold Michigan income tax on certain members' distributive share of income. Flow-through entities remit withheld taxes on a quarterly basis using this form.

Overview of Flow-Through Withholding

What is the overall structure of the Flow-Through Withholding process?

A flow-through entity that is subject to the Flow-Through Withholding requirements (see below) must file quarterly returns and corresponding payments on this form. By the last day of the second month after the flow-through entity's tax year end, the flow-through entity must file an Annual Flow-Through Withholding Reconciliation Return (Form 4918), which will reconcile the aggregate liabilities and payments from the quarterly returns.

The annual reconciliation return will provide the name and account number of each member (partner, member, or shareholder) and the amount withheld on behalf of each member. The flow-through entity is also required to report several items to its members. These items include (1) the FEIN of the flow-through entity; (2) the flow-through entity's tax year; (3) the amount withheld on behalf of that member to be claimed on the member's Corporate Income Tax (CIT) or Individual Income Tax (IIT) return; (4) that member's tentative distributive share of the flow-through entity's taxable income; (5) the flow-through entity's sales that have been sourced to Michigan for the tax year; and (6) the flow-through entity's total sales for the tax year. This information must be reported to the member by the last day of the first month after the end of the flow-through entity's tax year. The withholding information provided by the flow-through entity to its owners must be in writing, but there is no prescribed form or required format. The Michigan Department of Treasury (Treasury) recommends that the flow-through entity provide the information to its members as a supplemental attachment to the federal Schedule K-1 that is distributed to its members.

Who must pay Flow-Through Withholding?

Flow-Through Withholding is paid to the State by flow-through entities and the requirement to pay is based on its different types of members, as explained below. A flow-through entity is any entity that is an S Corporation under IRC § 1362(a); a general partnership, a limited partnership, or a limited liability partnership; or a limited liability company, that for the applicable tax year is not taxed as a C Corporation for federal income tax purposes. Trusts are not flow-through entities for purposes of withholding and are not required to withhold on trust beneficiaries.

Who are members of a flow-through entity?

Members are the owners of a flow-through entity and may be S Corporation shareholders, general partners, limited partners, limited liability company members, or limited liability partnership members. **Trusts are not "members" of a flow-through entity for purposes of Flow-Through Withholding**.

Flow-Through Withholding on behalf of corporate members

If the flow-through entity reasonably expects to accrue more than $200,000 of apportioned business income in the tax year then it must withhold on the distributive share of all of its members that are C Corporations or that have elected to be taxed as C Corporations for federal purposes. The flow-through entity must withhold at the CIT rate of 6 percent on the distributive shares of these members.

Flow-Through Withholding on behalf of nonresident individual members

A flow-through entity must withhold at the IIT rate on the distributive shares of all of its nonresident individual members. Flow-Through Withholding for nonresident individual members is required regardless of the entity's amount of business income. The flow-through entity must withhold at the IIT rate of 4.25% on the distributive shares of these members.

Flow-Through Withholding on behalf of other flow-through entities (tiered structure)

In general, if a flow-through entity (source flow-through entity) has members that are other flow-through entities (intermediate flow-through entity members), then the source flow-through entity must withhold on the distributive share of each intermediate flow-through entity member at the CIT rate of 6 percent.

However, the source flow-through entity may withhold at the IIT rate, instead of the CIT rate, on any distributive share of income for which it is able to identify the ultimate member of the intermediate flow-through entity member as a nonresident individual. Finally, the source flow-through entity is not required to withhold if it is able to identify the ultimate member of the intermediate flow-through entity member as a resident individual. Due to the change in the IIT rate, if the flow-through entity's tax year ends in 2012 it will withhold on its nonresident individual members at the rate of 4.33 percent. The source flow-through entity will withhold on its nonresident individuals at the rate of 4.25 percent for tax years ending in 2013.

An intermediate flow-through entity member that has no business income sourced to Michigan, other than business income received from a source flow-through entity, will not have to pay additional Flow-Through Withholding and will be credited with any payments made on its behalf by the source flow-through entity.

When the intermediate flow-through entity member receives its year-end report from the source flow-through entity, it must forward the applicable information to its members that will ultimately receive these Flow-Through Withholding payments made by the source flow-through entity. The name and FEIN of the source flow-through entity also should be provided to the members of the intermediate-tier flow-through entity.

Publicly traded partnerships, as defined under Internal Revenue Code 7704(b), and entities that are disregarded for federal tax purposes are not required to withhold on their members under Flow-Through Withholding.

Calculating Michigan flow-through business income

Business income of a flow-through entity

For corporate members, business income is federal taxable income calculated as if the following two provisions were not in effect: IRC § 168(k) "bonus depreciation" and IRC § 199 domestic production activity deduction.

For nonresident individual members, no adjustments for "bonus depreciation" or the domestic production activity deduction are required when calculating the nonresident individual's or trust's share of distributive income.

Allocation

If all the sales of a flow-through entity are sourced to Michigan, then all of the business income of that flow-through entity is allocated to Michigan and is subject to Flow-Through Withholding. If the flow-through entity has sales outside of Michigan, then the flow-through entity's business income must be apportioned.

Apportionment for a flow-through entity that has individual members

If the business income of the flow-through entity is subject to tax in another state or foreign country then the business income of the flow-through entity must be apportioned to Michigan using the flow-through entity's sales factor. The flow-through entity's sales factor is a fraction. The numerator is the flow-through entity's sales that have been sourced to Michigan and the denominator is the flow-through entity's sales everywhere. When determining which sales are to be included in the sales factor for nonresident individual members, the flow-through entity will use the sales sourcing provisions within the IIT. This sales factor will be applied to the entire amount of distributive business income of the flow-through entity to determine the Michigan business income that is subject to Flow-Through Withholding. The IIT rate of 4.25 percent is then applied to this amount to calculate the amount of Flow-Through Withholding to be paid on behalf of nonresident individual members.

When calculating the sales factor to be used for nonresident individual members, sales includes throw back sales and also includes services based on cost of performance.

Apportionment for a flow-through entity with C Corporation members or intermediate flow-through entity members

If the business income of the flow-through entity is subject to tax in another state or foreign country, then the business income of the flow-through entity must be apportioned to Michigan using the flow-through entity's sales factor. The flow-through entity's sales factor is a fraction. The numerator is the flow-through entity's sales that have been sourced to Michigan and the denominator is the flow-through entity's sales everywhere. When determining which sales are to be included in the sales factor for C Corporation or intermediate flow-through entity, the flow-through entity will use the sales sourcing provisions within the CIT. This sales factor will be applied to the entire amount of distributive business income of the flow-through entity to determine the Michigan business income that is subject to Flow-Through Withholding. The CIT rate of 6 percent is then applied to this amount to obtain the Flow-Through Withholding due for members that are C Corporations or intermediate-tier flow-through entities. However, in a tiered-entity structure, if the owner of the intermediate tier flow-through entity member is known to be a nonresident individual, then the flow-through entity may withhold on that member at the IIT rate of 4.25 percent. If the owner of the intermediate flow-through entity member is known to be a resident individual then no withholding is due for that member.

Due Dates of Flow-Through Withholding Quarterly Return

Flow-through entities that are on a calendar year basis must withhold and file quarterly by April 15, July 15, and October 15 of the tax year, and January 15 of the subsequent year. Flow-through entities that are not on a calendar year must withhold and file quarterly returns by the 15th day after the end of each quarter. Fiscal year filer due dates apply regardless of the tax years of the members.

A quarterly return must be filed if the flow-through entity has an amount due for the quarter. If the flow-through entity is not remitting a payment then this form is not required to be filed.

Line-by-Line Instructions

Due Date: This quarterly return is due to Treasury by the 15th day after the end of the quarter reported on the return. If the 15th falls on a holiday or weekend, the due date is the first business day following the weekend or holiday. Enter the date in an MM-DD-YYYY format.

Quarter Ending Date: Enter the ending date of the quarter reported on this return. Enter the date in an MM-DD-YYYY format.

Street Address: The flow-through entity's primary address in Treasury files is identified as the legal address and is used for all purposes and will not change unless the taxpayer files a *Notice of Change or Discontinuance* (Form 163). Exception: If mail sent to the legal address has been returned to Treasury by the United States Postal Service, Treasury will update the flow-through entity's legal address with the address used on this line in the most recent tax return.

FEIN: Use the flow-through entity's Federal Employer Identification Number (FEIN) or the Michigan Treasury (TR) assigned number. If the flow-through entity does not have an FEIN, the taxpayer is encouraged to register online at **www.michigan.gov/businesstaxes**.

The Web site provides information on obtaining an FEIN. Flow-through entities usually can obtain an FEIN from the IRS within 48 hours. Flow-through entities registering with the State online usually receive an account number within seven days.

Returns received without a registered account number will not be processed until such time as a number is provided.

Organization Type Code: From the list below, enter the business type code that accurately describes the flow-through entity filing this return.

Line 1: Enter the amount of Flow-Through Withholding paid that is attributable to nonresident individual members. This includes members owning an interest in the filing entity directly or, to the extent known, indirectly through other flow-through entities.

Line 2: Enter the amount of Flow-Through Withholding that is attributable to C Corporations, or any entity electing to be taxed federally as a C Corporation. Also enter the amount of Flow-Through Withholding that is attributable to intermediate-tier flow-through entities unless the identity of the ultimate owners of the lower-tier flow-through entity is known to be a resident or nonresident individual. This includes members owning an interest in the filing entity directly or, to the extent known, indirectly through other flow-through entities.

Line 3: Quarterly returns filed late or without sufficient payment of the tax due are subject to a penalty of 5 percent of the tax due, for the first two months. Penalty increases by an additional 5 percent per month, or fraction thereof, after the second month, to a maximum of 25 percent.

Line 4: Add line 1, line 2 and line 3. This is the amount that should be submitted with this return.

EFT Payments

Flow-through entities may elect to make remittances by Electronic Funds Transfer (EFT). If this election is made, the requirement to file the quarterly FTW return is waived. The payment must still reasonably approximate the liability for the quarter.

NOTE: A debit transaction will be ineligible for EFT if the bank account used for the electronic debit is funded or otherwise associated with a foreign account to the extent that the payment transaction would qualify as an International ACH Transaction (IAT) under NACHA Rules. Contact your financial institution for questions about the status of your account. Contact Treasury's Electronic Funds Transfer Unit at (517) 636-6925 for alternate payment methods.

Mailing Addresses

Mail the Quarterly Return to:

Michigan Department of Treasury
PO Box 30800
Lansing MI 48909-8300

Make all checks payable to "State of Michigan." Print the taxpayer's Federal Employer Identification Number (FEIN), the tax year, and "FTW Q" on the front of the check. Do not staple the check to the return.